

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

Proposed Rulemaking Regarding
the Contribution Methodology for
Wireless and VoIP Carrier's
Contributions to Universal Service
Funds

CC WC Docket No. 06-122

**MOTION
TO ACCEPT LATE-FILED COMMENTS
(COMMENTS ATTACHED)**

**The People Of The State Of California And The California Public
Utilities Commission (California Or CPUC) Respectfully Submits This
Motion To Accept Late-Filed Before The
Federal Communications Commission
Washington, D.C. 20554**

The People of the State of California and the California Public Utilities Commission ("California or CPUC") respectfully submits this motion to Accept Late-Filed Comments in the above docket. The CPUC's Comments were due on September 8, 2006. These comments are late because of the press of other business.

Respectfully submitted,

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September 29, 2006

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

Proposed Rulemaking
Regarding the Contribution
Methodology for Wireless and
VoIP Carrier's Contributions to
Universal Service Funds

WC Docket No. 06-122

**LATE-FILED REPLY COMMENTS OF THE PEOPLE OF THE
STATE OF CALIFORNIA AND THE CALIFORNIA PUBLIC
UTILITIES COMMISSION**

The People of the State of California and the California Public Utilities Commission ("California" or "CPUC") respectfully submit these late filed reply comments in response to the Notice of Proposed Rulemaking ("NPRM") issued by the Federal Communications Commission ("FCC") regarding the Contribution Methodology for Wireless and VoIP Carriers' Contributions to Universal Service Funds.

The FCC issued an Interim Order and Notice of Proposed Rule Making Regarding Universal Service Contributions by Wireless and VoIP Carriers in WC Docket No. 06-122 (hereafter, "Order") in which it makes interim changes

to current Federal Universal Service contribution methodologies for the wireless safe harbor and establishes a safe harbor for VoIP service. The FCC NPRM seeks comments on whether, in a final order, the FCC should eliminate or raise the interim safe harbor for wireless carriers¹ and establish a safe harbor for interconnected VoIP providers.² The following reply comments are in response to that NPRM.

I. WIRELESS SAFE HARBOR

A number of parties discussed the increase to the wireless “safe harbor” to 37.1%.³ The safe harbor percentage for wireless providers was last increased in 2002, and it is appropriate to review and update the data. (See Opening Comments of CTIA, dated August 9, 2006.) However, the FCC’s Order increases the wireless safe harbor from 28.5 % to 37.1 % based on incomplete and unverified data. California supports retaining the wireless safe harbor in order to facilitate contributions from smaller wireless carriers who may have a higher proportionate cost in determining their actual interstate and international end user revenues. As the safe harbor percentage is set at the high end of the range it provides proper incentives to

¹ *In the Matter of Universal Service Contribution Methodology, et al.*, Report and Order and Notice of Proposed Rulemaking, WC Docket No. 06-122, *et al.*, FCC 06-94 (rel. June 27, 2006) (“*2006 USF Contribution Order*”) at ¶ 66.

² *Id.* at ¶ 68

³ See e.g., Alexicon at pp. 3-8, CTIA at pp. 9-10, Office of Advocacy, U.S. Small Business Administration at p. 3, Tracfone Wireless at pp.2-8.

carriers that can afford to determine their actual interstate and international end-user revenues to do so.

The FCC should establish a threshold for carriers that seek to use the safe harbor. One unfortunate consequence of setting the safe harbor percentage at the high end of the range⁴ is the impact on state universal service mechanisms that base contributions on intrastate revenue.

The increase to 37.1% is based on the highest percentage of interstate and international usage by a wireless company supported in the record. The lowest percentage of interstate minutes found in the record was 11.9%. While the range is consistent with the preliminary FCC staff analysis showing that aggregate wireless service providers' interstate minutes-of-use have grown to approximately 29 %, it does not mean that there has been a dramatic shift in calling patterns as the FCC intimates.⁵ In fact, it is clear that the 37.1 % number does not reflect average interstate usage, and appears in its selection to be an attempt to maximize the revenues associated with the federal jurisdiction to support the federal universal service programs.

The FCC has access to individual wireless company revenue information and should use specific information about the allocation of

⁴ The highest percentage of interstate and international usage by a wireless company supported in the record. *2006 USF Contribution Order* at ¶ 25.

⁵ See *Id.* at ¶ 28.

interstate, international, and intrastate revenue in establishing the safe harbor percentage in the future. Based on the actual percentages used by wireless companies that are less than the safe harbor percentage, the FCC should be able to establish a formula that will more scientifically determine a reasonable safe harbor percentage.

II. IMPACT ON CALIFORNIA

If the FCC implements the 37.1%, California's Universal Service programs could face a revenue shortfall of up to \$80,000,000 (8.6%). Further, this number could increase in the future as more customers migrate from wire line phone to wireless phone services, a trend recently noted in the Commission's Uniform Regulatory Frameworks decision.⁶

The proposed increase in the wireless safe harbor could reduce the assessable intrastate revenues from wireless providers for California universal service programs from 71.5% to 62.9% (an 8.6% decrease). Currently, wireless contributions to the billing base against which California's public program surcharges are assessed as an account for over 50% of the total billing base. The table below contains billing base breakdowns for each of the categories for the last four fiscal years.

	Wireless	Local Exchange	Inter-	Total
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⁶ *Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities, R.05-04-005 (filed April 7, 2005 at 56).*

			Exchange	
FY 02-03	9,721,452,489	6,472,032,334	3,249,657,229	19,443,142,052
FY 03-04	10,447,132,941	5,676,797,458	3,258,854,171	19,382,784,570
FY 04-05	11,762,668,766	5,263,755,442	3,383,742,935	20,410,167,143
FY 05-06*	12,953,540,237	5,308,357,634	3,148,581,992	21,370,479,863

*FY 05-06 figures represent 8 months of annualized revenue.

An 8.6% decrease in the fiscal year 05-06 wireless billing base revenue represents a loss of over **\$1 billion dollars** from the denominator of the contribution calculations. To make up for the resulting \$80 million reduction in revenue, California would have to increase its contribution percentage by nearly a quarter of a percent. Limiting the impact on state universal service contributions should be a goal when reforming the FCC methodology.

As the above table illustrates, the public program billing base has remained relatively stable in California and has in fact increased in the face of declining wireline contributions, because the increase in wireless contributions has more than made up for the decline. However, shifting future wireless contributions to the federal jurisdiction will create a gap in California between state universal service revenue and expenses. As a result

of the significant impact on California's state universal service programs, the CPUC requests that the FCC maintain the 28.5% safe harbor based on the aggregate wireless service providers' interstate minutes-of-use instead of the 37.1% figure in the Interim Order.

At the moment, the federal contribution percentage is higher than California's contribution percentage; the incentive is for carriers to under-report interstate and international revenue in favor of intrastate revenue. As long as this is the case, establishing a safe harbor percentage at the highest end of the range supported in the record provides positive incentive to carriers to perform traffic studies instead of relying on the safe harbor percentage. This meets the FCC's goal that carriers contribute based on actual data.⁷ California urges caution in selecting a higher percentage for as noted above, the increase in revenues allocated to the interstate and international jurisdictions has a direct impact on the universal service contribution rates in California. If the FCC were to set an unrealistically high safe harbor rate, the contribution percentage in California might exceed the FCC's percentage, and carriers will no longer have the proper incentive to conduct traffic studies.⁸

⁷ 2006 *USF Contribution Order* at ¶ 28.

⁸ California believes that the framework adopted by the FCC works in theory, but as long as carriers pass universal service charges along to customers in the form of line item charges, the theoretical framework breaks down and reduces, but does not eliminate, the financial incentive of the carriers to meet the FCC's goal. *Id.*

Should the FCC determine to maintain the 37.1% safe harbor, it should take other steps, consistent with its goals, to help minimize the impact of the higher safe harbor figure on states such as California. One such action would be to require companies to allocate revenue based on actual traffic studies if their contributions based on the safe harbor would exceed a certain amount. As the safe harbor is designed to be used by companies that would otherwise find the cost of a traffic study to be prohibitive, there is a threshold above the *de minimis* contribution amount where the cost of such a study is cost effective. The Commission's preference is for carriers to contribute based on actual data,⁹ and establishing a contribution amount that would require the use of traffic studies would be consistent with this goal. California proposes that an annual contribution amount of \$100,000 or greater based on the safe harbor would trigger a requirement that the carrier conduct a traffic study and base its contributions prospectively on this and future traffic studies.¹⁰

III. VoIP SAFE HARBOR:

The Order requires interconnected VoIP providers to begin contributing to the federal Universal Service Fund. The CPUC agrees that the FCC Order corrects one of the deficiencies in the current contribution methodology.

⁹ *Id.*

¹⁰ See Office of Advocacy, U.S. Small Business Administration at p. 3. A fourteen percentage point difference between the FCC's safe harbor rate and the long distance percentage cited by participants in the SBA's roundtable discussion would also provide a reasonable basis upon which to calculate an alternative threshold amount if the \$100,000 amount is not used.

(AT&T's Opening Comments at 1, dated August 9, 2006) The FCC has taken this action to extend "USF contribution obligations to providers of interconnected VoIP services ...at this time in order to respond to ...growing pressures on the stability and sustainability of the Fund."¹¹ As a result of this finding, the FCC set an interstate safe harbor amount of 64.9 %, which is the same "percentage of interstate revenues reported to the FCC by wire line toll providers."¹²

As noted above, the CPUC agrees with the goal of setting a high safe harbor percentage in order to provide incentive to VoIP carriers to perform traffic studies and contribute based on actual interstate and international revenue, however, the CPUC also agrees with the American Cable Association that given that VoIP service providers carry both interstate and intrastate services it would be more accurate and fair to establish a safe harbor for interconnected VoIP providers based on analogous services rather than solely on interstate toll. (American Cable Association Opening Comments, dated August 9, 2006, at 1.) California's believes that the FCC's reliance on the data in the iLocus Weekly Newsletter to substantiate its claim that VoIP traffic is "predominantly long distance or international"¹³ is flawed. The iLocus Weekly Newsletter is using data for subscribers in 25

¹¹ 2006 USF Contribution Order at ¶ 19.

¹² *Id.* at ¶ 56.

¹³ *Id.* at ¶ 53.

different countries,¹⁴ and the figures derived from this worldwide sample are not a valid proxy for United States service. Additionally, in reaching the conclusion that wire line toll service and interconnected VoIP services follow similar calling patterns; the FCC relies on various advertisements from VoIP providers marketing discounted long-distance and international rates.

However, there are also numerous marketing efforts by VoIP providers extolling the interconnected VoIP consumers' potential savings on residential rates.¹⁵ Utilizing these examples, the FCC should in its final order find that interconnected VoIP service calling patterns most closely resemble the calling patterns of wireless or POTS telephone service. While this might understate the interstate portion of VoIP calls, it also underscores the need to view VoIP as it is: a substitute for local, long-distance, and international traffic, and increasingly a replacement for POTS. Given this, relying on international VoIP calling patterns and interstate toll service calling patterns may provide an unreliable estimate for the new safe harbor.

IV. JURISDICTION

It appears that in setting an interstate and international safe harbor percentage at less than 100%, the FCC is permitting states to extend state Universal Service contribution obligations to providers of interconnected

¹⁴ See *iLocus Weekly Newsletter*, March 21, 2006, *available at* www.ilocus.com

¹⁵ See www.vonage.com, "local and long distance calls" (viewed: September 06, 2006); www.att.com/voip "unlimited local and long distance calling" (viewed: September 06, 2006); www.broadvoice.com "unlimited in-state" (viewed: September 06, 2006).

VoIP services so that states too can respond to growing pressures on the stability and sustainability of state Universal Service mechanisms. The most reasonable reading of the FCC's determination on contributions by interconnected VoIP services is that the FCC is allowing states to extend state universal service obligations to use the intrastate portion of VoIP revenues for the purpose of assessing contributions to State Universal Service Funds. (See Opening Comments of the VON Coalition referencing issues surrounding state jurisdiction over the intrastate portion of VoIP traffic, dated August 9, 2006, at 6.) If the intrastate portion of VoIP traffic is not subject to state Universal Funds requirements, VoIP carriers will continue be given an unfair economic advantage when compared to other voice carriers (e.g., wireline and wireless carriers) who all are now contributing to state Universal Service funds. This issue goes directly to the heart of the FCC's effort in this docket to ensure that all carriers who use the network contribute equitably to Universal Service.¹⁶

This is also an important issue for states with state Universal Service programs like California. California's Universal Service programs will face a revenue shortfall as the number of domestic VoIP users' increases, and the number of wire line users continues to decrease, unless the California PUC

¹⁶ 47 U.S.C. § 254(b) (4).

has clear jurisdiction to assess a Universal Service surcharge on some portion of VoIP revenues representing intrastate revenues.

The arguments that telecommunication services and geography do not go together¹⁷ are contrary to long established and continuing practices as well as public policy.¹⁸ While internet information may flow across multiple political boundaries, the Universal Service obligations remain vested mostly with individual states. In fact, Universal Service is designed to ensure “consumers in all regions of the Nation” have access to quality telecommunications and information services.¹⁹ State Universal Service obligations on interconnected VoIP services are not a divergence from a national policy framework, but in fact reinforce national Universal Service goals. Providing states with the limited authority to require VoIP providers to contribute to state funds is consistent with the FCC’s decision to require such providers to contribute to the federal fund.²⁰

California respectfully urges the Commission to consider the forgoing comments as it proceeds to address the important issues raised in this Docket.

¹⁷ See e.g., Comments of VON Coalition at p.13, Verizon at pp.2-3, Vonage at p.4.

¹⁸ NARUC Legislative Task Force Report on Federalism and Telecom, July 2005. http://www.naruc.org/associations/1773/files/federalism_s0705.pdf (viewed September 6, 2006).

¹⁹ 47 U.S.C. §254(b).

²⁰ 2006 USF Contribution Order at ¶¶ 34-49.

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